

1 DAVID Z. CHESNOFF, ESQ.  
2 *Pro Hac Vice*  
3 RICHARD A. SCHONFELD, ESQ.  
4 California Bar No. 202182  
5 CHESNOFF & SCHONFELD  
6 520 South Fourth Street  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 384-5563  
9 dzchesnoff@cslawoffice.net  
10 rschonfeld@cslawoffice.net  
11 Attorneys for Defendant, ALEXANDER SMIRNOV

12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 \* \* \* \* \*

16 UNITED STATES OF AMERICA, )  
17 )  
18 Plaintiff, ) CASE NO. 2:24-CR-00091-ODW  
19 v. )  
20 )  
21 ALEXANDER SMIRNOV, )  
22 )  
23 Defendant, )  
24 )  
25 )  
26 )  
27 )  
28 )

**DEFENDANT'S REPLY TO OPPOSITION TO MOTION TO REOPEN DETENTION  
HEARING AND TO IMPOSE CONDITIONS OF PRETRIAL RELEASE**

20 COMES NOW, Defendant, ALEXANDER SMIRNOV ("Mr. Smirnov"), by and through  
21 his attorneys, DAVID Z. CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the law  
22 firm of CHESNOFF & SCHONFELD and hereby files his Reply to the Government's Opposition  
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2 (Gov. Opp.”) (ECF No. 77) to Mr. Smirnov’s Motion to Reopen the Detention Hearing and to  
3 Impose Conditions of Pretrial Release (“Def. Mot.”) (ECF No. 76).  
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7 Dated this 7th day of June, 2024.  
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28 Respectfully Submitted:

CHESNOFF & SCHONFELD

/s/ David Z. Chesnoff  
DAVID Z. CHESNOFF, ESQ.  
*Pro Hac Vice*  
RICHARD A. SCHONFELD, ESQ.  
California Bar No. 202182  
520 South Fourth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 384-5563  
rschonfeld@cslawoffice.net  
dzchesnoff@cslawoffice.net  
Attorneys for Defendant  
ALEXANDER SMIRNOV

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant respectfully submits this Reply to the Government’s Opposition to the Motion to Reopen the Detention Hearing under 18 U.S.C. § 3142(f)(2).<sup>1</sup> In his motion, Mr. Smirnov pointed out that—although his eye disease had been mentioned as early as February 2024—it was only *as recently as May 17, 2024* that Dr. George Tanaka (Mr. Smirnov’s personal eye surgeon) offered a dire assessment of his patient’s imminent blindness:

- “[M]y patient, Alexander Smirnov, . . . carries a diagnosis of severe open angle glaucoma in both eyes . . . [C]ontinued ophthalmologic care is essential to maintain Mr. Smirnov’s eyesight.
- “Glaucoma is a progressive and incurable disease that requires daily eyedrop medications to prevent irreversible and permanent blindness. Santa Ana City Jail officials have confiscated my patient’s eye drops . . . because ‘the eye drops are for pre-operative care.’ This statement is completely erroneous and untrue. Glaucoma patients are required to take daily eye drop medications . . . to prevent irreversible blindness.
- “Withholding Mr. Smirnov’s eye drops is tantamount to allowing [him] to go blind . . . Mr. Smirnov will lose a vital bodily function (vision) as a direct result of the negligence committed by the jail officials.”
- “In my professional opinion Mr. Smirnov’s visual health would be best served by releasing him from custody so that I may immediately resume appropriate sight-saving therapy including all necessary glaucoma medications and promptly schedule and perform his long overdue glaucoma surgery.”

Exhibit 1 to Def. Mot. at 1.

In response, the government claims that this Court should not, in the first instance, entertain this new evidence of impending blindness. Instead, the government asserts that—because Mr.

<sup>1</sup> “A detention hearing may be reopened if the party requesting reopening presents ‘new information.’ 18 U.S.C. § 3142(f) (hearing may be reopened ‘if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community’); *United States v. Flores*, 856 F. Supp. 1400, 1405–07 (E.D. Cal. 1994).” *United States v. Espinoza*, No. CRS08-0448 JAM, 2009 WL 3614849, at \*1 (E.D. Cal. Oct. 27, 2009).

1 Smirnov complained generally about his eye disease back in February 2024—Dr. Tanaka’s far  
 2 more recent (that is, far newer) assessment is not “new” but is, according to the government, just  
 3 a recycling of the “same old Smirnov complaint”—one that the government has grown tired of  
 4 responding to.<sup>2</sup> This Court should thus reject the government’s position (one that ignores their  
 5 months-long failure to provide Mr. Smirnov with eye surgery while trying to portray Mr. Smirnov  
 6 as a whiner who should just “suck it up” as his world grows darker and blurrier) and entertain Mr.  
 7 Smirnov’s new evidence of blindness, that is, Dr. Tanaka’s far newer, May 17, 2024 assessment  
 8 on the merits.

10 Substantively—that is, after correctly considering Mr. Smirnov’s new proposal on the  
 11 merits—the government has virtually nothing to say. First, they ignore the substance of the new  
 12 24-security proposal and, without that new proposal, misleadingly assert that this Court has ruled  
 13 against Mr. Smirnov in the past, without this new condition. *See* Gov. Opp. at 1-4 (“once again”  
 14 rehashing the procedural history).

16 Elsewhere, the government warns that allowing Mr. Smirnov to pay for his own security  
 17 would raise the “uncomfortable” (Gov. Opp. at 5, n.3) specter of favoring defendants who happen  
 18 to *not* be indigent. The government’s warning is both empty and baseless. First, it is the *defendant*  
 19 and *his family* that will foot the bill for the 24-security. Second—and underscoring the  
 20 government’s egalitarian position—the defendant and his family’s offer to pay for Mr. Smirnov’s  
 21 eye surgery (through Dr. Tanaka) and his own security spares the taxpayers the burden of paying  
 22 for assigned eye surgeons and assigned security. If the prosecution is “uncomfortable” about any  
 23 aspect of this arrangement, then it should take solace in knowing that the taxpayers will be saved  
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26 <sup>2</sup> One can almost hear government counsel’s exasperation when grousing that Mr. Smirnov is  
 27 “once again” (Gov. Opp. at 1) insisting upon his constitutional and statutory rights under the Bail  
 Reform Act.

1 from the expense. *See, e.g., United States v. Madoff*, 586 F. Supp. 2d 240, 244 (S.D.N.Y. 2009)  
2 (court releases defendant facing long prison sentences on conditions, including defendant's  
3 "employ[ment], at his wife's expense, [of] a security firm acceptable to the Government," which  
4 will "provide[] round-the-clock monitoring at Madoff's building, 24 hours per day," and which  
5 "will provide additional guards available on request if necessary to prevent harm or flight").  
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7 For the foregoing reasons and for those set forth in Mr. Smirnov's opening motion,  
8 therefore, this Court should entertain his motion to reopen the detention hearing and grant Mr.  
9 Smirnov his presumptive release under the previously imposed conditions, the new condition of  
10 24-hour security, and any other conditions this Court deems reasonable to assure his appearance.  
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12 DATED this 7<sup>th</sup> day of June, 2024.  
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14 Respectfully Submitted:  
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16 CHESNOFF & SCHONFELD  
17

18 /s/ David Z. Chesnoff  
19 DAVID Z. CHESNOFF, ESQ.  
20 *Pro Hac Vice*  
21 RICHARD A. SCHONFELD, ESQ.  
22 California Bar No. 202182  
23 520 South Fourth Street  
24 Las Vegas, Nevada 89101  
25 Telephone: (702) 384-5563  
26 rschonfeld@cslawoffice.net  
27 dzchesnoff@cslawoffice.net  
28 Attorneys for Defendant  
ALEXANDER SMIRNOV

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of June, 2024, I caused the forgoing document to be filed electronically with the Clerk of the Court through the CM/ECF system for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Camie Linnell  
Employee of Chesnoff & Schonfeld